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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

BETH ANN BARTON, Plaintiff and Appellant, v. THE ARGEN CORPORATION, Defendant and Respondent.	E068583 (Super.Ct.No. CIVDS1412670) OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Affirmed.

Holstein, Taylor and Unitt and Brian C. Unitt, for Plaintiff and Appellant.

Horvitz & Levy, Stephen E. Norris, Curt Cutting; WFBM and Lisa M. Rice, for Defendant and Respondent.

Plaintiff Beth Ann Barton claimed that she suffered an allergic reaction to her dental crowns. She sued her dentist, the maker of the crowns, and the supplier of the metal alloys used in the crowns. Defendant The Argen Corporation (Argen) supplied the metal alloys. The trial court granted Argen's motion for summary adjudication of three

products liability causes of action on statute of limitations grounds. After Barton filed a first amended complaint (FAC), the court sustained Argen's demurrer to causes of action for fraud, negligent misrepresentation, and unfair competition. The court also imposed sanctions against Barton and her counsel for exceeding the scope of its order granting leave to amend her complaint. Barton challenges these three rulings on appeal. We find no error and affirm the judgment and the sanctions order.

BACKGROUND

I. *Background Facts*

Argen supplies dental labs with metal alloys to make crowns. Nationwide Dental Laboratory, Inc. (Nationwide) buys its alloys from Argen. Argen is a member of the IdentAlloy Council (IdentAlloy). IdentAlloy is a marketing group that provides certificates to its members identifying their alloys. The IdentAlloy certificates indicate the name of the alloy, the composition of the alloy, the manufacturer, and whether the alloy is "noble" or "high noble." Each certificate has two parts—one for the lab and one for the dentist to attach to the patient's records. Upon request, Argen forwards these IdentAlloy certificates to the dental lab.

On April 5, 2010, Barton's dentist, Dr. M. Dee Elias, placed crowns on two teeth on the left side of her lower jaw. According to Barton, Dr. Elias said that he would use high noble gold crowns.

Dr. Elias ordered gold crowns from Nationwide. His understanding was that, when he specified gold crowns, Nationwide would provide high noble crowns. But a

Nationwide witness testified that it uses a noble alloy to make full gold crowns, not a high noble alloy.

An IdentAlloy certificate was attached to Barton's dental chart. It indicated that Nationwide made Barton's crowns with a high noble alloy called Argenco 5, which was 1.9 percent palladium. According to an Argen executive, Argen did not supply the certificate attached to Barton's chart. The certificate did not match Argen's IdentAlloy certificates for Argenco 5. The Argen executive did not know who had supplied it.

Barton began suffering symptoms almost immediately after Dr. Elias placed her crowns. On two dates in April 2010, she complained to Dr. Elias that her cheek felt swollen, her bite felt "off," and she was experiencing general discomfort on the left side of her mouth.

She continued to complain of symptoms in May 2010. At one May appointment, she saw Dr. Elias and reported jaw pain, swelling in her cheek, and a "funny feeling" in her mouth and cheek. At a second May appointment, she again complained to Dr. Elias of pain, discomfort, and swelling on the left side of her mouth. She also reported a nodule growing on the left side of her tongue. She asked Dr. Elias if she could be having an allergic reaction to the crowns, and she wanted him to remove them. Dr. Elias responded that she was not having an allergic reaction and that nothing was wrong with the crowns. He also gave her a copy of a "lab slip" with an Argen "sticker" showing that Nationwide had made her crowns with a high noble alloy, Argenco 5.

In September 2010, Barton continued to complain to Dr. Elias about swelling on the left side of her mouth, jaw pain, an uncomfortable bite, and the nodule on her tongue.

She "probably" mentioned again her thought that she might be having an allergic reaction. That same month, she saw an ear, nose, and throat specialist and reported a "tongue lesion" that she noticed after placement of her crowns.

Barton was not satisfied with Dr. Elias's response to her symptoms and consulted another dentist and an oral surgeon in October and November 2010. The surgeon removed the nodule on her tongue. She told the surgeon that she thought her crowns had caused the nodule. She told the dentist that she might be having an allergic reaction to her crowns because she had been experiencing symptoms as soon as the crowns were placed.

Her complaints to various medical providers continued in 2011. Barton saw a second ear, nose, and throat specialist in February 2011 and reported throat irritation that began right after placement of her crowns. She saw two more physicians in March and May complaining of pain and a feeling of "food stuck in her throat" on the left side, which "started after dental work to the left side of her mouth."

Barton saw an allergist in February 2012. She reported "mouth irritation since her crowns were cemented almost 2 years ago." The allergist determined that Barton is sensitive to nickel and advised her to consider having the crowns removed and replaced with some that did not contain nickel. Barton contacted Argen around March and asked whether the crowns could be tested for nickel without removing them, but she was told that was not possible.

Another dentist removed Barton's crowns in May 2012. She expressed concern to this dentist that her crowns were causing an allergic reaction. Her mouth "did not feel

puffy anymore" within the first few weeks of the crowns' removal; other symptoms did not subside.

In June 2013, a lab analyzed one of the crowns and determined that it was 3.01 percent palladium but did not contain nickel. The overall composition of the crown was consistent with a noble crown, not a high noble crown.

In November 2013, Barton contacted a dermatologist to test her for allergies to metals. The testing occurred in February 2014 and revealed that Barton is allergic to palladium.

II. *Barton's Complaint*

Barton filed her complaint in August 2014. She alleged three products liability causes of action against Argen (and others) for strict liability, negligence, and breach of warranty.[1] The strict liability cause of action alleged that Argen "designed, specified, manufactured, engineered, apothecated, sold, tested, controlled, prescribed, marketed, inspected, and distributed dental crowns" purporting to consist of a high noble alloy, and the crowns were defective and unsafe in that they lacked adequate warnings as to possible side effects. Argen allegedly had a duty to disclose these side effects to Barton.

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1 Barton also alleged the products liability causes of action against Nationwide, Dr. Elias, and two corporate entities related to Dr. Elias. (We will refer to Dr. Elias and the related corporate entities as the dental defendants.) In addition, she alleged fraud, negligent misrepresentation, and professional negligence against the dental defendants. The dental defendants and Nationwide are respondents in related appeals but are not parties to this appeal. (See *Barton v. Nationwide Dental Laboratory, Inc. et al.*, (E069947, app. pending); *Barton v. Elias, Elliot, Lampasi, Fehn, Harris & Nguyen et al.*, (E068331, app. pending).)

The negligence cause of action was nearly identical to the strict liability cause of action, but it alleged that Argen acted "negligently and carelessly." The cause of action for breach of warranty alleged that Argen breached warranties that Barton's crowns were free from defects, safe for their intended use, and merchantable.

III. *Argen's Summary Judgment Motion*

Argen moved for summary judgment or, in the alternative, summary adjudication. Among other things, it argued that the products liability causes of action were time-barred by the two-year statute of limitations for personal injury claims. (Code Civ. Proc., § 335.1.)[2] Nationwide and the dental defendants moved separately for summary judgment.

IV. *Barton's Motion for Leave to Amend the Complaint*

Before opposing any of the summary judgment motions, Barton moved for leave to amend her complaint. She claimed to have learned that the IdentAlloy certificate attached to her chart was forged. She had filed a Doe amendment naming IdentAlloy as a defendant, and she wanted to add new allegations about the forgery of the certificate, the lack of controls to prevent forgery, and Argen's process of creating an alloy and sending it to dental labs with the IdentAlloy certificates. She also sought to add Nationwide to the fraud cause of action; to add Nationwide, Argen, and IdentAlloy to the negligent misrepresentation cause of action; to add IdentAlloy to the products liability causes of

[2] Further undesignated statutory references are to the Code of Civil Procedure unless otherwise indicated.

action; and to add a seventh cause of action for unfair competition (Bus. & Prof. Code, § 17200) against Nationwide, Argen, and IdentAlloy.

Argen and Nationwide opposed the motion for leave to amend the complaint. Nationwide argued in part that if the court granted leave to amend, the court should construe Nationwide's pending summary judgment motion as a summary adjudication motion, because Barton's proposed FAC did not change the causes of action addressed in its summary judgment motion.

The court heard Barton's motion for leave to amend the complaint before all of the defense summary judgment motions. It granted her motion and gave her four days to file and serve the FAC, but it declined to take the pending summary judgment motions off calendar. Instead, it said that it would consider defendants' motions for summary judgment to be motions for summary adjudication of the causes of action in the original complaint.

V. *Hearing on the Dental Defendants' Summary Judgment Motion and Ruling on Argen's Summary Judgment Motion*

The day after granting Barton leave to amend her complaint, the court heard the dental defendants' summary judgment motion. The dental defendants pointed out that Barton's proposed FAC did not include new causes of action against them, so if the court were to grant their summary judgment motion, it would dispose of the entire action against them. Barton's counsel and the court then had the following exchange:

"[Counsel]: May I be heard on one element of that, your Honor? With respect to the amendment that was granted by the Court, is the Court requiring us to not take any clean-up steps with respect to the proposed amendment? And the reason I ask that—

"THE COURT: The Court is telling you you should do what you believe you need to do.

"[Counsel]: Okay."

Two weeks later, the court heard Argen's summary judgment motion and summarily adjudicated the products liability causes of action in Argen's favor. The court held that there were no triable issues of material fact as to the statute of limitations and the causes of action were thus time-barred.

VI. *Barton's FAC and Argen's Demurrer*

Barton filed her FAC in January 2017, shortly before the summary adjudication ruling in Argen's favor. The FAC added Argen to the fraud and negligent misrepresentation causes of action and alleged the new cause of action against Argen for unfair competition. (The FAC also included the products liability causes of action, but they were no longer at issue after the court's summary adjudication ruling.)

The FAC alleged that, before placing Barton's crowns, the dental defendants received one or more IdentAlloy certificates from Nationwide; the certificates stated that the crowns were made with Argen's high noble alloy, Argenco 5. The FAC further alleged that the crowns were made with a noble alloy, not Argenco 5, and the IdentAlloy certificates were "more likely than not" forged. Accordingly, the fraud and negligent misrepresentation causes of action alleged that all defendants provided forged IdentAlloy

certificates to Barton misrepresenting that her crowns were made from Argenco 5. The causes of action also alleged separate misrepresentations by the dental defendants. In alleged reliance on those misrepresentations, Barton paid the dental defendants for the crowns, permitted them to place the crowns, and received further dental treatment from them.

The cause of action for unfair competition alleged that providing the forged IdentAlloy certificates and failing to establish procedures to guard against forgery amounted to unlawful, unfair, or fraudulent business practices.

Argen moved to strike the portions of the FAC that differed from the proposed FAC. It also demurred to the FAC. In relevant part, it argued that Barton had not pleaded the elements of fraud or negligent misrepresentation with the required specificity and that the four-year statute of limitations barred the unfair competition cause of action.

The court sustained Argen's demurrer without leave to amend. It concluded that Barton had not alleged facts showing that Argen made any intentional or negligent misrepresentations to her, or that she relied on such misrepresentations in obtaining treatment. Moreover, the court concluded, the cause of action for unfair competition was untimely. In light of this ruling, the court denied Argen's motion to strike as moot.

The court entered a judgment of dismissal in favor of Argen.

VII. *Argen's Motion for Sanctions*

Shortly after Argen demurred to and moved to strike the FAC, it moved for sanctions against Barton and her counsel. Among other things, Argen contended that sanctions were warranted because the FAC exceeded the scope of the court's order

granting leave to amend. Argen pointed out that Barton alleged the fraud cause of action and claims for punitive and exemplary damages against it, even though her motion for leave to amend did not include those changes. Argen sought at least $9,300 in attorney fees and costs as sanctions.

In opposition, Barton argued that the court gave her leave to make the challenged amendments when her counsel asked about clean-up steps at the dental defendants' summary judgment hearing, and the court responded that she should do what she believed she needed to do.

The court granted Argen's motion and imposed $4,689 in sanctions against Barton and her counsel. It reasoned: "Barton continues to advance the argument that having an order for leave to amend a complaint does not restrict what amendments can actually be filed, despite multiple rulings from this court to the contrary. [¶] The court finds that sanctions are warranted against Barton and her counsel for filing a new operative complaint in excess of the authority granted by the motion for leave to amend." The court expressly declined to base the sanctions award on a finding that the FAC was factually frivolous.

DISCUSSION

I. *Summary Adjudication of the Products Liability Causes of Action*

Barton contends that the court erred by summarily adjudicating the products liability causes of action because the timeliness of her complaint involved triable issues of material fact. We disagree.

A. *Standard of Review*

The trial court may grant summary adjudication if there is no triable issue of material fact and the issues raised by the pleadings may be decided as a matter of law. (§ 437c, subds. (c), (f); *Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 813.) To prevail, moving defendants must show that one or more elements of the challenged causes of action cannot be established or that there is a complete defense to the causes of action. (§ 437c, subds. (a), (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 (*Aguilar*).)

Once the moving defendants have carried their initial burden, the burden shifts to the plaintiff to show a triable issue of material fact with respect to the causes of action or defense. (§ 437c, subd. (p)(2); *Aguilar, supra,* 25 Cal.4th at p. 849.) The court must consider all the evidence and the reasonable inferences from it in the light most favorable to the nonmoving party. (*Aguilar*, at p. 843.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850.)

We review summary adjudication orders de novo and apply the same legal standard as the trial court. (*Travelers Property Casualty Co. of America v. Superior Court* (2013) 215 Cal.App.4th 561, 574.) We independently examine the record to determine whether there are triable issues of material fact and whether the moving party is entitled to summary adjudication as a matter of law. (*Wiener v. Southcoast Childcare*

Centers, Inc. (2004) 32 Cal.4th 1138, 1142; *Travelers Property Casualty Co. of America v. Superior Court*, *supra*, at p. 574.)

B. *Statute of Limitations*

An action for personal injury caused by a defective product, whether alleged as simple negligence, strict liability, or breach of warranty, is governed by a two-year statute of limitations. (§ 335.1; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 809, fn. 3 (*Fox*); *Bennett v. Suncloud* (1997) 56 Cal.App.4th 91, 94-95, 97 [applying the predecessor to section 335.1 to products liability causes of action].) The statute of limitations generally begins to run when a cause of action accrues—that is, "when the cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).)

The discovery rule is an exception to this general rule of accrual. (*Norgart*, *supra*, 21 Cal.4th at p. 397.) Products liability causes of action are subject to delayed accrual under the discovery rule. (*Fox*, *supra*, 35 Cal.4th at p. 809.) This rule "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Norgart*, at p. 397.) Plaintiffs discover a cause of action when they "suspect[] or should suspect that [their] injury was caused by wrongdoing, that someone has done something wrong to [them]." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 (*Jolly*).) "'[W]hen the plaintiff has notice or information of circumstances to put a reasonable person *on inquiry*, or *has the opportunity to obtain knowledge* from sources open to his [or her] investigation . . . the statute commences to run.'" (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 101; accord *Jolly*, *supra*, at pp. 1110-1111.)

"While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment [or summary adjudication] is proper." (*Jolly*, *supra*, 44 Cal.3d at p. 1112.)

In this case, the undisputed facts lead to only one legitimate inference: The two-year statute of limitations expired before Barton filed her complaint in August 2014. Barton began suffering symptoms in the area of her crowns almost immediately after Dr. Elias placed them in April 2010. When she saw Dr. Elias in May 2010, she expressed concern that she was having an allergic reaction to them. She continued to report similar symptoms, which she tied to her crowns, to various medical providers for the next two years. She also told several of these professionals that she might be having an allergic reaction to her crowns. She finally had a different dentist remove the crowns in May 2012.

Even if we delay accrual under the discovery rule, the statute of limitations began to run when Barton had her crowns removed. She was "under a duty to reasonably investigate" at this point. (*Jolly*, *supra*, 44 Cal.3d at p. 1112.) There is no dispute that she suspected that the crowns were causing her symptoms. Once they were removed, their composition and her allergy to palladium could "reasonably be discovered through investigation of sources open to her," and she could determine that she did not get high noble crowns as allegedly promised. (*Id.* at p. 1109.) She was thus on inquiry notice of her claims in May 2012. The statute of limitations expired in May 2014, but she did not file suit until August 2014. Her causes of action were therefore time-barred.

Barton contends that, under the discovery rule, the statute of limitations began to run in February 2014, when testing revealed her allergy to palladium. But the limitations period started running once she had the opportunity to confirm her suspicions, not when she actually concluded her investigation on her own timeline. Once plaintiffs have "a suspicion of wrongdoing, and therefore an incentive to sue, [they] must decide whether to file suit or sit on [their] rights. So long as a suspicion exists, it is clear that the plaintiff[s] must go find the facts; [they] cannot wait for the facts to find [them]." (*Jolly, supra*, 44 Cal.3d at p. 1111.)

In short, there were no triable issues of material fact as to Argen's statute of limitations defense. On this basis, the court properly granted summary adjudication of the products liability causes of action.

II. *Demurrer to the Fraud, Negligent Misrepresentation, and Unfair Competition Causes of Action*

Barton next contends that the court erred by sustaining Argen's demurrer. She argues that she pleaded fraud and negligent misrepresentation with specificity, and her unfair competition cause of action was timely under the discovery rule. These arguments lack merit.

A. *Standard of Review*

A demurrer tests whether a complaint states a cause of action as a matter of law. (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 808.) We review the complaint independently to determine whether it alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) "'We

treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] . . .' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *Fraud and Negligent Misrepresentation*

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "'Every element of the cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) The plaintiff must plead facts showing "'how, when, where, to whom, and by what means the representations were tendered.'" (*Ibid.*) The same holds true for negligent misrepresentation, which sounds in fraud. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166.)

Both of these causes of action require a misrepresentation of material fact, the plaintiff's actual reliance on the misrepresentation, and resulting damage. (*Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1089, fn. 2; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) "'Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown.'" (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1818.) A mere assertion of reliance is not enough. (*Cadlo v. Owens-Illinois, Inc.*, *supra*, at p. 519.) "Actual reliance occurs when the defendant's misrepresentation is an

immediate cause of the plaintiff's conduct, altering his [or her] legal relations, and when, absent such representation, the plaintiff would not, in all reasonable probability, have entered into the transaction." (*Ibid.*)

Barton's allegations of fraud and negligent misrepresentation were not sufficiently specific, particularly when it came to reliance. She alleged these two causes of action against "[a]ll [d]efendants" (boldface omitted)—the dental defendants, Nationwide, Argen, and IdentAlloy. As to the dental defendants, she alleged that they alone misrepresented a number of facts. In addition, the collective defendants allegedly provided forged IdentAlloy certificates to her. Assuming that this allegedly forged certificate constituted a misrepresentation of fact by Argen, Barton's allegations did not specifically show reliance. She alleged that, in reliance on misrepresentations, she paid for and permitted the dental defendants to place the crowns and received further dental treatment from them. Yet she does not specify which misrepresentations induced this reliance—the IdentAlloy certificates, the dental defendants' separate misrepresentations, or both.

More to the point, she did not allege "'how, when, [or] where'" she learned of the IdentAlloy certificates. (*Stansfield v. Starkey*, *supra*, 220 Cal.App.3d at p. 73.) The FAC alleges only that "[p]rior to installation of the [c]rowns," Nationwide sent the IdentAlloy certificates to the dental defendants. This still does not identify how, when, or where Barton learned of the certificates. If she did not learn of them until after she paid for the crowns and Dr. Elias placed them, they could not have induced her reliance in the manner suggested by the FAC. (*Slakey Bros. Sacramento, Inc. v. Parker* (1968) 265 Cal.App.2d

204, 208 [parties cannot be defrauded by misrepresentations of which they did not know at the time of their loss]; *Bank of St. Helena v. Lilienthal-Brayton Co.* (1928) 89 Cal.App. 258, 263 ["[T]here can be no reliance on statements which do not come to the knowledge of a contracting party until after he has consummated the transaction"]; 5 Witkin, Summary of Cal. Law (11th ed. 2017) Torts, § 931, p. 1265 ["If the statements did not come to the knowledge of the plaintiff until after he or she acted, obviously plaintiff cannot claim reliance on them"].)

On appeal, Barton does not address this pleading deficiency except to say that she "justifiably relied on" the IdentAlloy certificate "since she was given a copy of the chart by her dentist including a sticker that she reasonably believed had been provided by Argen." This allegation does not appear in her FAC. Even if it did, she nevertheless does not specify *when* this occurred. According to the evidence offered in support of Argen's summary judgment motion, in May 2010, Dr. Elias gave Barton a lab slip for the crowns that included the IdentAlloy certificate (or a "sticker," as she called it). Presumably she is referring to this event. If so, this only reinforces our point. Dr. Elias placed the crowns in April 2010. She could not have relied on the certificate to allow him to place the crowns when she did not see it until May 2010. The court properly sustained Argen's demurrer to the fraud and negligent misrepresentation causes of action on the ground that Barton did not sufficiently allege reliance.

C. *Unfair Competition*

The statute of limitations for an unfair competition cause of action is four years. (Bus. & Prof. Code, § 17208.) This cause of action is subject to the same rules as the

products liability causes of action. That is, the limitations period begins to run when the cause of action accrues. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) It accrues "'"when [it] is complete with all of its elements"—those elements being wrongdoing, harm, and causation.'" (*Ibid.*; see also *id.* at pp. 1196-1197.) The discovery rule may delay accrual. (*Ayreh*, at p. 1192.)

A demurrer will lie when the dates expressly alleged in the complaint disclose that the statute of limitations bars an action. (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191; *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324.) "In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his [or her] claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." (*Fox*, *supra*, 35 Cal.4th at p. 808; see also *Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1197 [the burden of showing exceptions to the general rule of accrual is imposed on the plaintiff even at the pleading stage].) Conclusory allegations of delayed discovery will not suffice. (*Fox*, at p. 808; *WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 157.)

The allegations of the FAC disclosed that Barton's unfair competition cause of action accrued in April 2010. The alleged unfair competition consisted of providing the forged IdentAlloy certificates and failing to establish procedures to guard against forgery. Barton alleged that the dental defendants placed the crowns in April 2010, and at some point before this, they received the allegedly forged certificates from Nationwide.

Moreover, under the fraud cause of action, she alleged that she paid $2,250 "in anticipation of the manufacture and purchase" of the crowns and the dental defendants' services, which money constituted damages "because she was promised and expected one type of crowns (of the highest quality) and received a different (lower quality) type of crowns." This is the sort of economic harm that the unfair competition law contemplates. (Bus. & Prof. Code, § 17204; *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 323.) Argen's alleged wrongdoing thus occurred by April 2010, as did harm to Barton. But she did not bring the unfair competition cause of action until January 2017, long after the four-year statute of limitations expired.[3]

As she does with the products liability causes of action, Barton argues that this cause of action was timely under the discovery rule. She asserts that she did not discover the falsity of the IdentAlloy certificate until June 2013, when she had the crown analyzed and discovered the composition was not as represented. Consistent with this argument, the FAC alleged that she discovered the "representations of the [d]efendants were in fact false . . . in or about June of 2013," after she sent the crown for testing. This alleged the time and manner of discovery. (*WA Southwest 2, LLC v. First American Title Ins. Co.*,

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[3] Barton suggests that the relation back doctrine should apply here. The doctrine effectively enlarges the statute of limitations by holding that an amended complaint relates back to the filing of the original one. (*Norgart, supra*, 21 Cal.4th at p. 408.) The doctrine "requires that the amended complaint must (1) rest on the *same general set of facts*, (2) involve the *same injury*, and (3) refer to the *same instrumentality*, as the original one." (*Id.* at pp. 408-409.) Assuming for the sake of argument that the FAC related back to the filing of the original complaint, the unfair competition cause of action was still untimely. The limitations period expired in April 2014, and Barton filed the original complaint in August 2014.

supra, 240 Cal.App.4th at p. 157.) For delayed accrual to apply, however, she also had to plead facts showing the inability to have made earlier discovery despite reasonable diligence, and she had to do so in a nonconclusory manner. (*Ibid.*) The FAC did not allege this inability.

In sum, the face of the FAC revealed that the unfair competition cause of action accrued in April 2010. Barton failed to carry her burden of pleading the applicability of the discovery rule, so the statute of limitations expired in April 2014. The court correctly concluded that this cause of action was time-barred.

III. *Motion for Sanctions*

Barton contends that the court abused its discretion by imposing sanctions against her and her counsel.[4] We also reject this argument.

The court may impose sanctions for filing a pleading "primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." (§ 128.7, subds. (b)(1), (c).) It may also impose sanctions if the pleading is legally or factually frivolous. (§ 128.7, subds. (b)(2) & (3), (c); *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440.) To obtain sanctions, the movant must show that the opposing party's conduct was objectively unreasonable. (*Peake v. Underwood*, *supra*, at p. 440.) "A claim is objectively unreasonable if 'any reasonable attorney would agree

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[4] Barton's counsel did not separately file a notice of appeal from the sanctions order. Barton argues that we may nevertheless review the order as to counsel. Argen does not address the issue. We agree with Barton on this point and construe her notice of appeal to include her counsel also. (*Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 974 [construing a notice of appeal from a sanctions order to include counsel, even though the notice named only the plaintiff].)

that [it] is totally and completely without merit.'" (*Ibid.*) We review a sanctions award for abuse of discretion. (*Id.* at p. 441.)

First, the court explained that it imposed sanctions for exceeding the scope of its order granting leave to amend the complaint. We have no doubt that Barton's FAC did not comply with the court's order. Her motion for leave to amend the complaint included a copy of the proposed FAC. The court's order granting leave to amend was "made with reference to the proposed amended pleading and g[ave] the pleader the right to file the particular amendment which [she] submitted to the trial court." (*People ex rel. Dept. Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785.) In addition, the court could not permit the substantive amendments proposed by Barton without "notice to the adverse party." (§ 473, subd. (a)(1).) Barton did not move to add Argen to the fraud cause of action or add claims against it for punitive and exemplary damages, nor did Argen have notice of those proposed changes and an opportunity to respond. Consequently, the order granting Barton's motion did not authorize that new cause of action or those new claims for damages.

Second, the court's implicit determination that Barton and her counsel filed the FAC for an improper purpose was not an abuse of discretion, given their blatant disregard for the scope of the court's order granting leave to amend. Barton suggests that they acted in "objective good faith" on the basis of the court's comments at the dental defendants' summary judgment hearing. At that hearing, the day after the court's order granting leave to amend, Barton's counsel asked: "With respect to the amendment that was granted by the Court, is the Court requiring us to not take any clean-up steps with

respect to the proposed amendment? And the reason I ask that—." The court then interjected: "The Court is telling you you should do what you believe you need to do."

It was objectively unreasonable to believe that the court's off-the-cuff comment authorized any amendments that Barton believed were necessary, sight unseen, particularly without notice to the affected defendants and an opportunity to respond. Barton suggests that there was no evidence that she or her counsel harbored an improper purpose, such as causing unnecessary delay or needlessly increasing the cost of litigation. But the objectively unreasonable reading of the court's comment, and the material, unauthorized revisions to her proposed FAC, constituted circumstantial evidence of such intent. Barton has not shown that the court abused its discretion by imposing sanctions against her and her counsel. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1422 [affirming a sanctions order because the court properly found that the defendant moved for relief from judgment "not to assert any arguably legitimate legal right but to frustrate and impede what [he] and his attorneys knew was an inevitable defeat"]; *Eichenbaum v. Alon*, *supra*, 106 Cal.App.4th at pp. 971-972, 976 [affirming a sanctions order that was based in part on the plaintiff's assertion of a new cause of action not authorized by the court].)

DISPOSITION

The judgment and the sanctions order are affirmed. Argen shall recover its costs of appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MENETREZ
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.